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DISTRICT II

March 26, 2025

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Hon. Faye M. Flancher
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

John Blimling
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John T. Wasielewski
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Bobby D. Conners Jr. #388297
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Oshkosh, WI 54903-3310

You are hereby notified that the Court has entered the following opinion and order:

2023AP2342-CRNM State of Wisconsin v. Bobby D. Conners, Jr. (L.C. #2019CF1142)

Before Gundrum, P.J., Neubauer and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Bobby D. Conners, Jr. appeals a judgment convicting him of seven drug-related crimes. He also appeals from two orders denying his postconviction motions for relief. His appellate counsel, John T. Wasielewski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24),¹ and *Anders v. California*, 386 U.S. 738 (1967). Conners received a copy of the report, was advised of his right to respond, and has filed a response. Appellate counsel filed a

¹ All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

supplemental no-merit report. We have independently reviewed the Record, the no-merit report, Conners's response, and the supplemental no-merit report, as mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. *See* WIS. STAT. RULE 809.21.

An amended information charged Conners with three counts of manufacturing/delivering less than three grams of heroin as a repeater and as a second/subsequent offense (counts one through three) and one count of manufacturing/delivering less than three grams of heroin as a repeater, as a second/subsequent offense, and as a party to the crime (count four). The charges stemmed from a confidential informant's controlled buys. The amended information also charged Conners with one count of possession with intent to deliver cocaine as a repeater and as a second/subsequent offense (count five), one count of possession with intent to deliver heroin as a repeater and as a second/subsequent offense (count six), and one count of possession of THC as a repeater and as a second/subsequent offense (count seven).² Those charges stemmed from a traffic stop during which officers noticed a marijuana blunt in plain view. A subsequent search uncovered two baggies of heroin and fifteen crack cocaine rocks.

The matter proceeded to trial where multiple witnesses, including law enforcement and the confidential informant, testified. The jury found Conners guilty as charged. On the first three counts, the trial court sentenced Conners to six years of initial confinement, followed by five years of extended supervision, to run concurrent to one another. On the fourth and fifth counts,

² The information also charged Conners with one count of possession with intent to deliver a Schedule One Narcotic (fentanyl) as a repeater and as a second/subsequent offense, however that count was not tried before a jury.

the court sentenced Conners to six years of initial confinement, followed by five years of extended supervision, concurrent to one another but consecutive to counts one through three. On count six, the court imposed and stayed a four-year term of initial confinement followed by a four-year term of extended supervision and imposed a three year-term of probation, to run consecutive to all of the other counts. On count seven, the court sentenced Conners to six months in the local jail, concurrent to his prison sentences.

Following sentencing, Conners filed a postconviction motion asking the postconviction court to reconsider a *Batson*³ challenge that defense counsel raised during jury selection. The court held a hearing and denied the motion. Conners then filed a second postconviction motion alleging that the prosecutor at his trial had a conflict of interest because she represented him in a previous case as a defense attorney. The court held a hearing and denied the motion. This no-merit report follows.

Appellate counsel's no-merit report addresses five issues: (1) whether the evidence presented at trial was sufficient to support the convictions; (2) whether the trial and postconviction courts erred in denying Conner's *Batson* challenge; (3) whether the trial court erred in accepting Conner's waiver of testimony; (4) whether the trial court erroneously exercised its sentencing discretion; and (5) whether the postconviction court erred in denying Conner's second postconviction motion.

We first address the sufficiency of the evidence. Our standard of review is whether the evidence, viewed in the light most favorable to the State, is so insufficient in probative value and

³ See *Batson v. Kentucky*, 476 U.S. 79 (1986).

force that as a matter of law no reasonable jury could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The standard is the same whether the evidence is direct or circumstantial. *Id.* Here, the State charged Conner with multiple drug-related offenses. The jury heard testimony from law enforcement describing the process of controlled buys and the details of Conner's traffic stop, which led to the discovery of heroin, cocaine, and THC. The jury also heard from the confidential informant and saw videos of the controlled buys. The jury also heard testimony confirming that the items tested following the controlled buys and the traffic stop were heroin, cocaine, and THC. Based upon the evidence adduced at trial, we conclude that no arguable merit could arise from a challenge to the sufficiency of the evidence.

Counsel's no-merit report next addresses whether the trial court erroneously dismissed defense counsel's *Batson* challenge during the jury selection process. After the parties had exercised their preemptory strikes, defense counsel argued that one African-American juror raised his hand in response to the State's question about previous criminal records, but was not recognized before the State exercised one of its strikes to dismiss that juror. In response, the State related the juror's prior convictions and asserted that she struck the juror due to his failure to disclose those convictions. Defense counsel again stated she saw the juror's hand raised, but there was no follow-up.

The trial court indicated that it did not see the juror's hand raised and said that the juror had multiple opportunities to answer the question in voir dire. The State also noted that the juror failed to respond to questions about prior contacts with the District Attorney's office. The court ruled that the State's peremptory strike "had nothing to do with race but had everything to do with truthfulness."

Following his conviction, Conners filed a postconviction motion and again raised the **Batson** issue. Conners asserted that the juror spoke with a defense investigator and told the investigator that he had raised his hand when the State inquired about prior convictions, police contacts, and contacts with the District Attorney's office, but that there was no follow-up from the attorneys or the court. At a hearing on the postconviction motion, the investigator testified about his conversation with the juror and the accuracy of his report. The State argued that the existence of the juror's three prior convictions, apart from non-disclosure, provided an independent basis for the strike. The court agreed with the State and also noted that the trial transcript showed the juror had numerous opportunities to respond to questions about his prior record, contacts with police, and contacts with the District Attorney's office. The court found the juror's failure to respond was an independent basis for the State's peremptory strike.

A **Batson** challenge requires showing that the State exercised a peremptory challenge on the basis of race. If that showing is made, the prosecutor must then provide a race-neutral explanation for the strike; and, if the prosecutor provides a race-neutral explanation, the trial court must then "determine whether the defendant has carried his burden of proving purposeful discrimination." *See Hernandez v. New York*, 500 U.S. 352, 358-59 (1991). Because the trial court "is in the best position to determine the credibility of the [S]tate's race-neutral explanations," we give "great deference" to the court's ruling as to whether the prosecutor had racially discriminatory intent or purpose in exercising a strike. *State v. Lamon*, 2003 WI 78, ¶¶41-42, 262 Wis. 2d 747, 664 N.W.2d 607. There is no arguable merit to a **Batson** challenge in this case. The Record shows that the juror in question had multiple opportunities to disclose his prior record. The trial court and the postconviction court both determined that the State's explanation was credibly race-neutral. The Record supports this determination.

Appellate counsel's no-merit report next addresses whether the trial court erred in accepting Conners's waiver of his right to testify. The Record shows that the court conducted a colloquy with Conners and established that he understood his right to testify, had discussed that right with defense counsel, and had knowingly and voluntarily chosen not to testify. The colloquy satisfied the requirements for a valid waiver of the right to testify. *See State v. Weed*, 2003 WI 85, ¶43, 263 Wis. 2d 434, 666 N.W.2d 485. Further pursuit of this issue would be frivolous within the meaning of *Anders*.

The no-merit report next addresses whether the trial court erroneously exercised its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Our review of the Record confirms that the court thoroughly considered the relevant sentencing objectives and factors. The court specifically focused on punishment and the need to protect the community. The sentence the court imposed is within the range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the court's sentencing discretion.

Appellate counsel's no-merit report also addresses whether the postconviction court erroneously denied Conners's second postconviction motion in which Conners alleged that the prosecuting attorney had a conflict of interest. Specifically, Conners alleged that the prosecutor—who was previously a defense attorney—represented him in a prior, unrelated, matter. The court held a hearing on the matter where the prosecutor testified. The prosecutor testified that she was unaware of her previous representation until she received the second postconviction motion. Upon review of the transcripts, the prosecutor stated that she withdrew

from representing Conners based on a breakdown in communication, but she had no “independent recollection” of the details of her representation. Relying on the prosecutor’s testimony and this court’s decision in *State v. Medina*, 2006 WI App 76, ¶31, 292 Wis. 2d 453, 713 N.W.2d 172, the court found no actual conflict. We agree. Not only did the prosecutor have no recollection of representing Conners, but Conners did not even draw attention to the potential conflict until well after trial. Indeed, he raised the issue in his *second* postconviction motion, suggesting that even he was unaware of the potential conflict until that point. Moreover, Conners presented no evidence that the prosecutor “had a competing loyalty that adversely affected [his] interests in this case.” *See id.*, ¶33. Accordingly, there is no arguable merit to the issue of the prosecutor’s supposed conflict of interest.⁴

In his response to appellate counsel’s no-merit report, Conners contends that the prosecutor’s spouse is a police officer who was somehow involved in his case, adding another layer to the prosecutor’s conflict of interest. Conners’s argument is based upon information obtained from a “reliable source.” However, Conners fails to allege who the officer is, how the “reliable source” came about his or her information, or what the officer’s involvement actually was. Moreover, Conners has not demonstrated any prejudice from the alleged involvement of the unnamed officer. There is no arguable merit to this issue.

In addition to the issues discussed above, we have independently reviewed the Record. We have reviewed, *inter alia*, pretrial procedures, evidentiary rulings, opening and closing statements, jury instructions, and the trial court’s denial of Conners’s motion to dismiss at the

⁴ In his response, Conners again argues that the prosecutor had a conflict of interest. We will not address this issue further.

close of evidence. We have not located any arguably meritorious issues for appeal. Accordingly, we accept the no-merit report, affirm the judgment of conviction, and relieve Attorney Wasielewski of further representation of Conners in this appeal.

Upon the foregoing,

IT IS ORDERED that the judgment and orders of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney John T. Wasielewski is relieved of further representation of Bobby D. Conners, Jr. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals